

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 28 2003

Federal Communications Commission
Office of Secretary

In re)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 00-180
Table of Allotments,)	RM-9956
Digital Television Broadcast Stations)	
Fort Myers, Florida)	
)	
Applications of)	BPCDT-19991029ADW
Fort Myers Broadcasting Company)	
WINK-DT, Fort Myers, Florida)	
For a Construction Permit)	
)	
Caloosa Television Corporation)	BLTVA-20010712AIK
WBSP-CA, Naples, Florida)	
For a License)	
)	
Caloosa Television Corporation)	BLTVA-20020520AAQ
WBSP-CA, Naples, Florida)	
For a License)	

To: Chief, Video Division
Media Bureau

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Rules 73.3525 and 73.3588, Fort Myers Broadcasting Company ("FMBC") and Caloosa Television Corporation ("Caloosa") request approval of the settlement embodied in the attached Settlement Agreement. In support of this request the parties submit that the DTV rulemaking in MM Docket No. 00-180 and FMBC's DTV application BPCDTV-19991029ADW conflict with Caloosa's operation of Class A Television Station WBSP-CA on Channel 9 at Naples, Florida, BLTVA-20010712AIKL and BLTVA-20020520AAQ. Caloosa has filed pleadings opposing FMBC's proposals in the DTV rulemaking and the DTV application. FMBC has filed pleadings opposing both of Caloosa's applications for WBSP-CA.

The parties have reached the following resolution of their differences, subject only to FCC approval of this settlement and final unappealable grant of FMBC's DTV rulemaking and DTV application:

(a) Caloosa requests dismissal of all of its pleadings, comments, objections and filings of any nature opposing FMBC's DTV rulemaking and FMBC's DTV application.

(b) Caloosa consents to any modification of WBSP-CA that may result from the grant in (a), above and, in particular, the parties hereto respectfully request expedited consideration and grant of a "displacement" application, BPTVA-20030418AAE, to modify the facilities of WBSP-CA to specify Channel 7 as its new operating

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frequency.

(c) Caloosa agrees that WBSP-CA will cease operations on Channel 9 prior to commencement of WINK-DT's operation on DTV Channel 9; expedited consideration of BPTVA-20030418AAE will allow WBSP-CA to provide virtually uninterrupted service during the frequency move from Channel 9 to Channel 7

(d) FMBC requests dismissal of its pleadings, comments, objections and filings of any nature opposing Caloosa's license applications; indeed, FMBC supports the grant of BPTVA-20030418AAE..

(e) FMBC shall reimburse Caloosa up to \$9,500.00 of its out-of-pocket expenses incurred in opposing the DTV rulemaking and FMBC's DTV construction permit and in applying for a displacement channel for WBSP-CA.¹

FMBC and Caloosa submit that the public interest is well served by grant of the proposed settlement. Fort Myers, Florida and the surrounding areas will receive DTV service from WINK-DT operating on an in-core television allotment.² Caloosa will receive only its out-of-pocket expenses incurred in FCC litigation and in developing a technical solution to the parties' dispute. Naples will receive television service on WBSP-CA's proposed channel 7 facilities.

As demonstrated in the Settlement Agreement, neither FMBC nor Caloosa filed its pleadings and proposals in the subject FCC proceedings with the purpose of entering into a settlement. The payments to be made to Caloosa are not in excess of reasonable and prudent expenditures made by Caloosa in prosecuting its applications and pleadings.

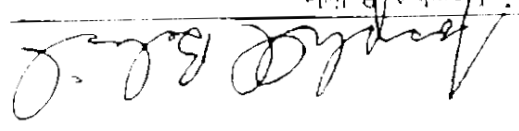
In view of the foregoing, the parties request approval of this Agreement and grant of FMBC's DTV rulemaking proposal and construction permit application. The parties further request that at such time as the FCC actions granting FMBC's DTV rulemaking proposal and construction permit applications are final and unappealable, the license applications of Caloosa be granted.

¹Caloosa has applied for authority to operate WBSP-CA on Channel 7 at Naples, Florida. See BPTVA-20030418AAE.

²WINK-DT's original DTV allotment was made outside of the core television spectrum.

Respectfully submitted,

FORT MYERS BROADCASTING COMPANY

By: 
Joseph A. Bellis
Its Attorney

CALOOSA TELEVISION CORPORATION

By: _____
Dennis J. Kelly
Its Attorney

LEIBOWITZ & ASSOCIATES, P.A.
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Miami, FL 33131
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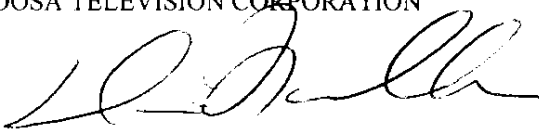
Respectfully submitted,

FORT MYERS BROADCASTING COMPANY

By _____
Joseph A. Belisle
Its Attorney

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CALOOSA TELEVISION CORPORATION

By  _____
Dennis J. Kelly
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
(202) 293-2300

April 28, 2003

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 18th day of April, 2003, by and between FORT MYERS BROADCASTING COMPANY ("FMBC") and CALOOSA TELEVISION CORPORATION ("Caloosa").

WITNESSETH:

WHEREAS, FMBC is the proponent of a rulemaking proposal pending before the Federal Communications Commission ("FCC") in MM Docket No. 00-180 seeking allotment of DTV Channel 9 to Fort Myers, Florida (the "Rulemaking"); and

WHEREAS, on November 26, 2002, Caloosa filed an Emergency Motion to Vacate Report and Order (the "Emergency Motion") challenging the Report and Order DA 02-3154, released November 20, 2002 (the "Rulemaking Order") allotting DTV Channel 9 to Fort Myers, Florida; and

WHEREAS, on December 20, 2002, Caloosa filed a Petition for Reconsideration of the Rulemaking Order (the "Rulemaking Reconsideration"); and

WHEREAS, FMBC has an application, FCC File No. BPCDT-19991029ADW, pending before the FCC for a construction permit for digital television station WINK-DT on Channel 9, Fort Myers, Florida (the "Construction Permit"); and

WHEREAS, on December 20, 2002, Caloosa filed an informal objection to grant of the Construction Permit (the "CP Objection"); and

WHEREAS, Caloosa has a granted license application, FCC File No. BLTVA-20010712AIK, for Station WBSP-CA (the "Class A License"); and

WHEREAS, on August 31, 2001, FMBC sought reconsideration of the grant of the

Class A License (the "Class A Reconsideration"); and

WHEREAS, on May 20, 2002, Caloosa filed a license application, FCC File No. BLTVA-20020520AAQ, with respect to Station WBSP-CA (the "License Application"); and

WHEREAS, on May 30, 2002, FMBC filed an informal objection to grant of the License Application (the "License Objection"); and

WHEREAS, the parties seek to resolve their disputes without resort to further proceedings:

NOW, THEREFORE, the parties intending to be contractually bound agree as follows:

1. Caloosa shall request the FCC to dismiss all of its pleadings, comments, objections and filings of any nature whatsoever opposing either grant of the Rulemaking or grant of the Construction Permit, including the Emergency Motion, the Rulemaking Reconsideration and the CP Objection.

2. Caloosa shall consent to any modification of the license of WBSP-CA which may be occasioned by grant of either the Rulemaking or the Construction Permit, or by operation of WINK-DT on Channel 9 at Fort Myers, Florida. Caloosa agrees that WBSP-CA will cease operations on Channel 9 prior to the time WINK-DT goes on the air.

3. FMBC shall reimburse Caloosa up to Nine Thousand Five Hundred Dollars (\$9,500.00) of Caloosa's out-of-pocket expenses incurred in opposing the Rulemaking and the Construction Permit and in implementing this Settlement Agreement, including the legal and engineering costs of applying for a displacement channel for WBSP-CA.

4. FMBC shall request the FCC to dismiss all of its pleadings, comments, objections and filings of any nature opposing either the Class A License or the License Application

including the Class A Reconsideration and the License Objection.

5. Within five (5) business days after the execution of this Agreement, the parties shall file joint requests for approval of this settlement in each of the Rulemaking, the Construction Permit, the Class A License and the License Application proceedings pending before the FCC. The parties shall use their best efforts to obtain FCC approval of the settlement set out in this Agreement.

6. The obligations of the parties in paragraphs 1-4 hereof are subject to the following condition precedent:

The FCC shall have issued an order or orders (the "FCC Consents") (a) approving the terms of this Agreement, (b) dismissing the Rulemaking Reconsideration and the CP Objection, (c) granting the Rulemaking, (d) granting the Construction Permit, and (e) the FCC Consents shall be final, unappealable orders no longer subject to administrative or judicial appeal, review or reconsideration.

7. In executing this Agreement, each of FMBC and Caloosa declares under penalty of perjury:

a. This Agreement sets out all consideration promised or to be paid in connection with the parties' proposed settlement;

b. It did not file any rulemaking, application, pleading, objection or appeal for the purpose of reaching a settlement;

c. This settlement is in the public interest because it hastens inauguration of DTV service on Station WINK-DT at Fort Myers, Florida; ends litigation concerning the License and Class A License of Station WBSP-CA, Naples, Florida; and provides funds to

Caloosa for a displacement channel application for Station WBSP-CA.

8. Each party represents to the other that (a) it is a corporation duly organized and validly existing under the laws of the State of Florida; (b) it has the power and authority to enter into this Agreement and to perform all of its obligations hereunder; (c) the person executing this Agreement on its behalf has express authority to do so and in doing so to bind the party hereto; and (d) the execution, delivery and performance of this Agreement does not violate its articles of incorporation, bylaws or any other instrument or agreement binding upon the party or its assets.

9. This Agreement shall be binding upon the parties hereto and their successors and assigns.

10. This Agreement may not be changed or terminated orally, and no attempted change, termination, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties. No express or implied waiver of any default under the Agreement shall in any way be construed to be a waiver of any future or subsequent default or a waiver of any of the other rights of the parties under the Agreement, or a modification of any said terms, or an extension or enlargement of the rights of the parties thereunder.

11. All notices and payments required to be given hereunder shall be in writing and sent by first class mail, postage prepaid, to the appropriate party at its address set forth below or at such other address as may be given by notice hereunder, or by delivering it to an officer of such party in person at such address. Where notice is sent by mail, it shall be deemed given on the third day following the date of the mailing and, if delivered in person, such notice shall be

effective when so delivered:

If to FMBC: Mr. Brian McBride
President
Fort Myers Broadcasting Company
2824 Palm Beach Boulevard
Fort Myers, Florida 33916

If to Caloosa: Mr. George E. Devault, Jr.
President
Caloosa Television Corporation
222 Commerce Street
Kingsport, TN 37660

12. The parties agree that this Agreement is deemed made in Fort Myers, Florida and shall be governed by the laws of the State of Florida.

13. The parties agree that monetary damages alone may not be sufficient to remedy a breach of this Agreement. Therefore, in addition to any other remedy available at law or in equity, each party shall have the right to specific performance of this Agreement upon the default of the other party hereunder.

14. In the event a party institutes litigation with respect to the obligations set out in this Agreement, the prevailing party shall be entitled to reimbursement of its costs and attorney fees incurred in the litigation and in any subsequent appeal.

15. This instrument embodies the entire agreement between the parties hereto and supersedes all prior oral or written agreements, understandings, representations and warranties and courses of conduct and dealing between the parties with respect to the transactions contemplated herein.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

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instrument. For purposes of this Agreement, facsimile signatures shall be treated the same as original signatures.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date set forth above.

~~FORT MYERS BROADCASTING COMPANY~~

By: ~~_____~~

~~Brian McBride
President~~

CALOOSA TELEVISION CORPORATION

By: _____

George E. Devault, Jr.
President

FORT MYERS BROADCASTING COMPANY

By: 

Gary W. Gardner
Vice President/General Manager

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that I have this 28th day of April, 2003, caused a copy of the foregoing "Joint Request for Approval of Settlement Agreement" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

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Washington, D.C. 20004

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Dow Lohnes & Albertson, P.L.L.C.
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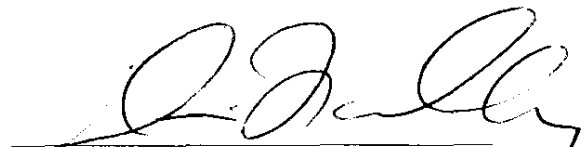
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Dennis J. Kelly

*by hand